

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	File No.: EB-08-SE-143
	)	
American Samoa Telecommunications Authority	)	NAL/Acct. No.: 200932100005
	)	
	)	FRN: 0001726488
	)	

**FORFEITURE ORDER**

**Adopted: October 19, 2012****Released: October 19, 2012**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of six thousand dollars (\$6,000) to American Samoa Telecommunications Authority (ASTCA) for willfully and repeatedly violating the hearing aid compatibility status report filing requirements set forth in the Commission's 2003 *Hearing Aid Compatibility Order*.<sup>1</sup>

**II. BACKGROUND**

2. In the 2003 *Hearing Aid Compatibility Order*, the Commission adopted several measures to enhance the ability of individuals with hearing loss to access digital wireless telecommunications. The Commission established technical standards that digital wireless handsets must meet to be considered compatible with hearing aids operating in acoustic coupling and inductive coupling (telecoil) modes.<sup>2</sup>

<sup>1</sup> Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, Report and Order, 18 FCC Rcd 16753, 16787, paras. 89-91 (2003); Erratum, 18 FCC Rcd 18047 (2003) (*Hearing Aid Compatibility Order*); Order on Reconsideration and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11221 (2005) (*Hearing Aid Compatibility Reconsideration Order*). The Commission adopted these requirements for digital wireless telephones under the authority of the Hearing Aid Compatibility Act of 1988, Pub. L. No. 100-394, 102 Stat. 976 (codified at 47 U.S.C. §§ 609 note, 610, 610 note).

<sup>2</sup> See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16777, 16779, paras. 56, 63; see also 47 C.F.R. § 20.19(b)(1), (2) (2003). The *Hearing Aid Compatibility Order* described the acoustic coupling and the inductive coupling (telecoil) modes as follows:

In acoustic coupling mode, the microphone picks up surrounding sounds, desired and undesired, and converts them into electrical signals. The electrical signals are amplified as needed and then converted back into sound by the hearing aid speaker. In telecoil mode, with the microphone turned off, the telecoil picks up the audio signal-based magnetic field generated by the voice coil of a dynamic speaker in hearing aid-compatible telephones, audio loop systems, or powered neck loops. The hearing aid converts the magnetic field into electrical signals, amplifies them as needed, and converts them back into sound via the speaker. Using a telecoil avoids the feedback that often results from putting a hearing aid up against a telephone earpiece, can help prevent exposure to over amplification, and eliminates background noise, providing improved access to the telephone.

*Hearing Aid Compatibility Order*, 18 FCC Rcd at 16763, para. 22.

Specifically, the Commission adopted a standard for radio frequency interference (formerly the U3 rating, now the M3 rating) to enable acoustic coupling between digital wireless phones and hearing aids operating in acoustic coupling mode, and a separate standard (formerly the U3T rating, now the T3 rating) to enable inductive coupling with hearing aids operating in telecoil mode.<sup>3</sup> The Commission further established, for each standard, deadlines by which handset manufacturers and digital wireless service providers were required to offer specified numbers of digital wireless handset models rated hearing aid-compatible.<sup>4</sup> Specifically, by September 16, 2005, manufacturers and service providers were required to offer at least two handset models per air interface that met the M3 rating for radio frequency interference.<sup>5</sup> In addition, by September 18, 2006, manufacturers and service providers were required to offer at least two handset models per air interface that met the T3 rating for inductive coupling.<sup>6</sup> These handset deployment requirements applied to each air interface over which service providers offer service.<sup>7</sup>

3. In order to monitor the availability of hearing aid-compatible digital wireless handsets, the Commission required manufacturers and digital wireless service providers to report every six months on efforts toward compliance with the hearing aid compatibility requirements for the first three years of implementation (May 17, 2004, November 17, 2004, May 17, 2005, November 17, 2005, May 17, 2006,

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<sup>3</sup> Former Section 20.19(b)(1) of the Rules provided that a digital wireless handset model is deemed hearing aid-compatible for radio frequency interference if, at minimum, it receives a U3 rating as set forth in “American National Standard for Methods of Measurement of Compatibility between Wireless Communications Device and Hearing Aids, ANSI C63.19-2001.” 47 C.F.R. § 20.19(b)(1) (2007). Former Section 20.19(b)(2) of the Rules provided that a digital wireless handset model is deemed hearing aid-compatible for inductive coupling if, at minimum, it receives a U3T rating as set forth in ANSI C63.19-2001. 47 C.F.R. § 20.19(b)(2) (2007). On April 25, 2005, the Commission’s Office of Engineering and Technology (OET) announced it would also certify digital wireless handsets as hearing aid-compatible based on the revised version of the standard, ANSI C63.19-2005. *See OET Clarifies Use of Revised Wireless Phone Hearing Aid Compatibility Standard Measurement Procedures and Rating Nomenclature*, Public Notice, 20 FCC Rcd 8188 (OET 2005); *see also* 47 C.F.R. § 20.19(b)(2) (2007). On June 6, 2006, the Commission’s Wireless Telecommunications Bureau (WTB) and OET announced the Commission would also certify digital wireless handset models as hearing aid-compatible based on the revised version of the standard, ANSI C63.19-2006. *See Wireless Telecommunications Bureau and Office of Engineering and Technology Clarify Use of Revised Wireless Phone Hearing Aid Compatibility Standard*, Public Notice, 21 FCC Rcd 6384 (WTB/OET 2006); *see also* 47 C.F.R. § 20.19(b)(2) (2007). Thus, during the time period relevant here, applicants for certification could rely on either the 2001 version, the 2005 version, or the 2006 version of the ANSI C63.19 standard. In addition, because the 2001 and 2005 versions of the ANSI C63.19 technical standard used the same technical criteria to determine the hearing aid compatibility and the inductive coupling capability of a wireless handset model, to avoid confusion, the “M” and “T” labeling system associated with the 2005 and 2006 versions of the standard may be used for compatibility testing performed under any of these versions. *See Hearing Aid Compatibility Reconsideration Order*, 20 FCC Rcd at 11238, n.118.

<sup>4</sup> *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780, para. 65; *see also* 47 C.F.R. § 20.19(c), (d) (2006). These requirements did not apply to service providers and manufacturers that met the *de minimis* exception. *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16775-76, para. 53.

<sup>5</sup> *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780, para. 65; *see also* 47 C.F.R. § 20.19(c).

<sup>6</sup> *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780, para. 65; *see also* 47 C.F.R. § 20.19(d).

<sup>7</sup> *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780, para. 65. The term “air interface” refers to the technical protocol that ensures compatibility between mobile radio service equipment, such as digital wireless handsets, and the service provider’s base stations. When the Commission released the *Hearing Aid Compatibility Order*, the leading air interfaces included Code Division Multiple Access (CDMA), Time Digital Multiple Access (TDMA), Global System for Mobile Communications (GSM), and Integrated Dispatch Enhanced Network (iDEN). *See id.* at 16771 n.127.

and November 17, 2006), and then annually thereafter through the fifth year of implementation (November 19, 2007, and November 17, 2008).<sup>8</sup>

4. In March 2008, the Spectrum Enforcement Division (Division) of the Enforcement Bureau received a complaint alleging that ASTCA had failed to file the required hearing aid compatibility status reports and therefore might not be in compliance with the hearing aid compatibility requirements. On March 24, 2008, the Division issued ASTCA a letter of inquiry (LOI).<sup>9</sup> ASTCA responded to the Division's LOI on May 9, 2008.<sup>10</sup> In its LOI Response, ASTCA explained that it failed to file the required reports because it was not aware of the *Hearing Aid Compatibility Order* or its subsequent amendments.<sup>11</sup> ASTCA also provided a list of all digital wireless handset models it offered since September 2005.<sup>12</sup> Based on this list, the Division determined that ASTCA apparently offered its first digital wireless handset model meeting the Commission's standards for radio frequency interference, the Motorola v265, on October 27, 2005, and its second, the Motorola v266, on April 10, 2006.<sup>13</sup> The Division also determined that ASTCA apparently offered its first inductive coupling-compliant handset model, the Motorola v323i, on March 21, 2007, and its second, the Motorola Razr v3m, on May 3, 2007.<sup>14</sup>

5. On November 5, 2008, the Division released a *Notice of Apparent Liability for Forfeiture (NAL)*<sup>15</sup> against ASTCA, concluding that ASTCA apparently willfully<sup>16</sup> and repeatedly<sup>17</sup> violated the

<sup>8</sup> See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16787, para. 89; see also *Wireless Telecommunications Bureau Announces Hearing Aid Compatibility Reporting Dates for Wireless Carriers and Handset Manufacturers*, Public Notice, 19 FCC Rcd 4097 (WTB 2004) (announcing the reporting dates set forth in the *Hearing Aid Compatibility Order*). In its 2008 *Hearing Aid Compatibility First Report and Order*, the Commission extended these reporting requirements with certain modifications on an open-ended basis, beginning January 15, 2009. See *Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, First Report and Order, 23 FCC Rcd 3406, 3445-46, paras. 97-99 (2008); Order on Reconsideration and Erratum, 23 FCC Rcd 7249, 7250, para. 4 (2008) (*Hearing Aid Compatibility First Report and Order*). The Commission also made clear that these reporting requirements applied to carriers qualifying for the *de minimis* exception. See *id.* at 3446, para. 99.

<sup>9</sup> Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Aliko Sene, Executive Director, American Samoa Telecommunications Authority (Mar. 24, 2008) (on file in EB-08-SE-143).

<sup>10</sup> Letter from Gwen Tauiliili-Langkilde, Esq., Legal Counsel, American Samoa Telecommunications Authority, to Nissa Laughner, Attorney Advisor, Spectrum Enforcement Division, FCC Enforcement Bureau (May 9, 2008) (on file in EB-08-SE-143) (LOI Response).

<sup>11</sup> See *id.* at 1-2.

<sup>12</sup> See *id.* at Attachment A.

<sup>13</sup> See *id.*

<sup>14</sup> See *id.*

<sup>15</sup> See *American Samoa Telecommunications Authority*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 16432 (Enf. Bur. 2008).

<sup>16</sup> Section 312(f)(1) of the Communications Act of 1934, as amended (Act), defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the Section 503(b) context. See 47 C.F.R. §§ 312, 503(b); *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (*Southern California*), *recon. denied*, Memorandum Opinion and Order, 7 FCC Rcd 3454 (1992) (*Southern California Reconsideration Order*); see also *Telrite Corp.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 7231, 7237, para. 12 (2008) (*Telrite*), *consent decree ordered*, Order and Consent Decree, 27 FCC Rcd 4110 (2012); *Regent USA, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 10520, 10523, para. 9 (2007) (forfeiture paid); *San Jose Navigation*, (continued . . . )

hearing aid compatibility status report filing requirements set forth in the Commission's 2003 *Hearing Aid Compatibility Order* by failing to file seven hearing aid compatibility status reports between May 2004 and November 2007.<sup>18</sup> The Division held that the failure to file hearing aid compatibility status reports had a continuing negative impact on the implementation of the hearing aid compatibility rules, and thus, the statute of limitations under Section 503(b)(6)(B) of the Act<sup>19</sup> did not begin to run until the reports were filed.<sup>20</sup> Nevertheless, the Division exercised its prosecutorial discretion and proposed a \$6,000 forfeiture for ASTCA's failure to file a single hearing aid compatibility status report, which was due on November 19, 2007.<sup>21</sup> The proposed \$6,000 forfeiture reflected an increase above the \$3,000 base forfeiture for failure to file required forms or information set forth in the *Forfeiture Policy Statement*<sup>22</sup> and Section 1.80(b) of the Commission's rules (Rules)<sup>23</sup> in recognition of the Commission's heightened interest in ensuring full access to the public safety benefits of digital wireless service, as well as the importance of these reports in providing consumers with information and enabling accurate administration and enforcement of the Rules.<sup>24</sup> The Division also admonished ASTCA for violating former Section 20.19(c)(2)(i)(B)(1) of the Rules<sup>25</sup> by failing to offer, by September 16, 2005, at least two handset models that met at least a M3 rating for radio frequency interference, and former Section 20.19(d)(2) of the Rules<sup>26</sup> by failing to offer by September 18, 2006, at least two handset models for each air interface that met at least a T3 rating for inductive coupling.<sup>27</sup>

6. On December 5, 2008, ASTCA filed a response to the *NAL*,<sup>28</sup> requesting cancellation or reduction of the forfeiture amount. In its *NAL* Response, ASTCA states that it failed to file hearing aid compatibility status reports because it was unfamiliar with the hearing aid compatibility status report filing requirements, citing the physical distance between American Samoa and Washington D.C. to explain its unfamiliarity.<sup>29</sup> ASTCA further states that upon becoming aware of its obligation to file

(Continued from previous page . . . ) \_\_\_\_\_  
*Inc.*, Forfeiture Order, 22 FCC Rcd 1040, 1042, para. 9 (2007), *consent decree ordered*, Order and Consent Decree, 25 FCC Rcd 1494 (2010).

<sup>17</sup> Section 312(f)(2) of the Act, which also applies to forfeitures assessed pursuant to Section 503(b) of the Act, provides that "[t]he term 'repeated,' . . . means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. §§ 312(f)(2). See *Callais Cablevision, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1359, 1362, para. 9 (2001), *forfeiture ordered*, Forfeiture Order, 17 FCC Rcd 22626 (2002); *Southern California*, 6 FCC Rcd at 4388, para. 5.

<sup>18</sup> See *NAL*, 23 FCC Rcd at 16435, para. 6.

<sup>19</sup> 47 U.S.C. § 503(b)(6)(B).

<sup>20</sup> See *NAL*, 23 FCC Rcd at 16437, para. 11.

<sup>21</sup> See *id.*

<sup>22</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113 (1997) (*Forfeiture Policy Statement*), *recon. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

<sup>23</sup> 47 C.F.R. § 1.80(b).

<sup>24</sup> See *NAL*, 23 FCC Rcd at 16436, para. 10.

<sup>25</sup> 47 C.F.R. § 20.19(c)(2)(i)(B)(1) (2007).

<sup>26</sup> *Id.* § 20.19(d)(2) (2007).

<sup>27</sup> See *NAL*, 23 FCC Rcd at 16437-38, paras. 12-13.

<sup>28</sup> See Letter from Gwen Tauiliili-Langkilde, Esq., Legal Counsel, American Samoa Telecommunications Authority, to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau (Dec. 5, 2008) (on file in EB-08-SE-143) (*NAL* Response).

<sup>29</sup> See *id.* at 1-2.



hearing aid compatibility status reports on May 9, 2008, it filed the data required in the reports with respect to all digital wireless handset models that it had purchased for resale at ASTCA retail outlets since September 2005.<sup>30</sup> ASTCA then claims that the forfeiture should be reduced because its failure to file did not “directly thwart” public access to information regarding hearing aid compatibility features of digital wireless handsets because such information was made available to the public via the hearing aid-compatible handset labels required by former Section 20.19(f) of the Rules.<sup>31</sup> ASTCA also claims that the forfeiture should be reduced because of its history of compliance with the rules and regulations of the Commission.<sup>32</sup> Finally, ASTCA argues that the forfeiture should be reduced because ASTCA will pass on the cost of the forfeiture to its customers, thereby further burdening the lower socioeconomic demographic it serves.<sup>33</sup>

### III. DISCUSSION

7. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,<sup>34</sup> Section 1.80 of the Rules,<sup>35</sup> and the Commission’s *Forfeiture Policy Statement*.<sup>36</sup> In

<sup>30</sup> See *id.* at 2.

<sup>31</sup> See *id.* Under former Section 20.19(f) of the Rules, 47 C.F.R. § 20.19(f) (2007), the Commission required wireless handset manufacturers to label the exterior packaging of each of their handsets with the handset’s technical rating, and to include more detailed information on the ANSI standard either in a product insert or in the handset’s manual. See also *Hearing Aid Compatibility Reconsideration Order*, 20 FCC Rcd at 11238, para. 33 (“We continue to believe that the two-pronged approach -- placement of a prominent exterior label indicating the handset’s technical rating, combined with more detailed information located inside the package -- will provide consumers with a quick synopsis of the information necessary to make an informed decision without impairing the ability of digital wireless handset manufacturers and service providers to engage in myriad marketing efforts.”); *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16785, paras. 83, 85-86 (adopting Section 20.19(f) of the Rules). The Commission also imposed similar labeling requirements on service providers. See 47 C.F.R. § 20.19(f) (2007); see also *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16785, para. 83 (requiring “service providers to ensure that the label is made visible to individuals with hearing disabilities so they may determine which wireless telephone best meets their individual needs”). As revised by the *Hearing Aid Compatibility First Report and Order*, Section 20.19(f)(1) of the Rules requires manufacturers and service providers to ensure that each hearing aid-compatible digital wireless handset is labeled with the appropriate rating, and clarifies that such rating is the lowest rating assigned to that handset for any air interface or frequency band. See 47 C.F.R. § 20.19(f)(1); see also *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3451, para. 116 (finding that “the most useful information for consumers is a single ‘worst case’ rating constituting the handset’s lowest rating for any air interface or frequency band”).

<sup>32</sup> See NAL Response at 2.

<sup>33</sup> See *id.*

<sup>34</sup> 47 U.S.C. § 503(b); see also *id.* § 503(b)(2)(B) (setting forth the statutory maximum forfeiture for common carriers). The Commission has amended Section 1.80(b)(2) of the Rules, 47 C.F.R. § 1.80(b)(2), three times to increase the maximum forfeiture amounts, in accordance with the inflation adjustment requirements contained in the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, 104 Stat. 890 (codified at 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, Pub. L. 104-134, 110 Stat. 1321 (codified at 31 U.S.C. § 3720B-3720E)). The most recent inflation adjustment took effect September 2, 2008, and applies to violations occurring after that date. See *Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 23 FCC Rcd 9845, 9847 (2008) (adjusting the maximum statutory amounts for common carriers from \$130,000/\$1,300,000 to \$150,000/\$1,500,000); 73 Fed. Reg. 44663-5. The violation in this case occurred before September 2, 2008, and thus, the forfeiture imposed against ASTCA for this violation may not exceed the lesser statutory amounts. See 47 C.F.R. § 1.80(b)(2) (2007).

<sup>35</sup> 47 C.F.R. § 1.80.

<sup>36</sup> See *supra* note 22.

examining ASTCA's NAL Response, Section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.<sup>37</sup> As discussed below, we are not persuaded by ASTCA's legal arguments and find that a forfeiture was validly proposed against ASTCA for its continuing violation of the hearing aid compatibility status report filing requirements set forth in the Commission's 2003 *Hearing Aid Compatibility Order*.

8. As noted above, ASTCA raises a number of arguments to support its request for reduction or cancellation of the proposed forfeiture. We find these arguments unpersuasive. First, ASTCA states that it did not knowingly fail to file its hearing aid compatibility status reports, suggesting that the violations were inadvertent and therefore not willful.<sup>38</sup> Specifically, ASTCA argues that because of the physical distance between American Samoa and Washington D.C., ASTCA was unfamiliar with the 2003 *Hearing Aid Compatibility Order* and its subsequent amendments.<sup>39</sup> Licensees, however, are expected to know and comply with the Rules, regardless of their geographic distance from the FCC's headquarters.<sup>40</sup> As the Commission has repeatedly held, violations resulting from inadvertent error or failure to become familiar with the FCC's requirements can be and often are willful violations.<sup>41</sup> In the context of a forfeiture action, "willful" does not require a finding that the rule violation was intentional.<sup>42</sup>

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<sup>37</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>38</sup> See NAL Response at 1-2.

<sup>39</sup> See *id.*

<sup>40</sup> See *Forfeiture Policy Statement*, 12 FCC Rcd at 17099, para. 22 ("[t]he Commission expects [each licensee], and it is each licensee's obligation, to know and comply with all of the Commission's rules"); see also, e.g., *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7437, para. 12 (2004) (*Discussion Radio*) (by issuing forfeitures for violations that may have been inadvertent, the bureau "impel[s] . . . licensees to become familiar with the terms of their licenses and the applicable rules, and to adopt procedures, including periodic review operations, which will ensure that stations will be operated in substantial compliance with their licenses and the Commission's rules") (quoting *Crowell-Collier Broadcasting Corp.*, Memorandum Opinion and Order, 44 FCC 2d 2444, 2449-50 (1961)), *forfeiture ordered*, Memorandum Opinion and Order, 24 FCC Rcd 2206 (Med. Bur. 2009)).

<sup>41</sup> See, e.g., *Emery Telephone*, Memorandum Opinion and Order, 13 FCC Rcd 23854, 23859, para. 12 (1998) (*Emery Telephone*) (by issuing forfeitures for inadvertent violations corrected after the fact, "the Bureau impels licensees to be more familiar with the applicable rules in structuring future conduct"), *recon. dismissed in part and denied in part*, Memorandum Opinion and Order, 15 FCC Rcd 7181 (1999); *Profit Enterprises, Inc.*, Forfeiture Order, 8 FCC Rcd 2846, 2846, para. 5 (1993) (in denying a mitigation claim based on the mistaken belief that certain Rules were inapplicable, the Commission explained that "prior knowledge or understanding of the law is unnecessary to a determination of whether a violation existed . . . [I]gnorance of the law is [not] a mitigating factor."), *cancelled on other grounds*, Order, 12 FCC Rcd 14999 (1997); *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2088, para. 5 (1992) (stating that inadvertent violations are "willful" violations as "[a]ll that is necessary is that the licensee knew it was doing the act in question"); *Southern California*, 6 FCC Rcd at 4387, para. 3 ("inadvertence, . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance"); *Lakewood Broadcasting Service, Inc.*, Memorandum Opinion and Order, 37 FCC 2d 437, 438, para. 6 (1972) ("If ignorance of [the Rules] were accepted as an excuse, we would be encouraging licensees to know as little as possible.").

<sup>42</sup> See, e.g., *Tidewater Communications, LLC*, Order on Review, 25 FCC Rcd 1675, 1676, para. 5 (2010) ("To be willful, the violator must consciously commit or omit certain actions and need not be aware that such actions violate the Rules."); *Southern California*, 6 FCC Rcd at 4388, para. 5 (holding that, consistent with the Congressional record accompanying the 1982 amendments to the Act, a "willful" violation need not be intentional); *Princess K Fishing Corp.*, Forfeiture Order, 24 FCC Rcd 2606, 2608-09, para. 8 (Enf. Bur. 2009) (stating that a licensee need not have the *mens rea* to commit a violation in order for a violation to be "willful"), *recon. dismissed*, Memorandum Opinion and Order, 27 FCC Rcd 4707 (Enf. Bur. 2012).

Rather, the term “willful” means that the violator knew it was taking (or in this case, not taking) the action in question, irrespective of any intent to violate the law.<sup>43</sup> In any event, as noted in the *NAL*, ASTCA’s violations were repeated, which provides an independent basis for imposing the proposed forfeiture.<sup>44</sup> Accordingly, ASTCA’s unfamiliarity with the hearing aid compatibility requirements is not a mitigating circumstance warranting cancellation or downward adjustment of the proposed forfeiture amount.

9. Second, ATSCA seeks reduction or cancellation of the proposed forfeiture based on its subsequent remedial efforts.<sup>45</sup> While ASTCA states that it filed the information required in its November 19, 2007, report on May 9, 2008, it did so more than five months after the filing deadline and only in response to the initiation of our investigation.<sup>46</sup> Although we have adjusted forfeitures downward when a licensee makes voluntary disclosures to Commission staff and takes corrective measures after discovering its violations and *prior* to any Commission inquiry or initiation of enforcement action,<sup>47</sup> we have not reduced forfeitures based on a licensee’s remedial conduct after the initiation of an investigation. As the Commission has long held, corrective action to come into compliance with the Rules is expected, and such corrective action does not nullify or mitigate prior violations or associated forfeiture liability.<sup>48</sup>

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<sup>43</sup> See *supra* note 16; see also H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law”).

<sup>44</sup> See *NAL*, 23 FCC Rcd at 16437, para. 11.

<sup>45</sup> See *NAL* Response at 2.

<sup>46</sup> See *id.* at 2. In response to the LOI, ASTCA not only provided the information required, but it provided additional information as well. With respect to the information ASTCA was required to provide, ASTCA was under the obligation to be completely candid in its response to a Commission inquiry. See 47 C.F.R. § 1.17(a), (b) (prohibiting in any investigatory or adjudicatory matter, the provision of incorrect material factual information or the omission of material factual information when necessary to prevent information from being false or misleading, whether done intentionally or “without a reasonable basis for believing that any such material factual statement is correct and not misleading”); see also *Southern California Reconsideration Order*, 7 FCC Rcd at 3455, para. 7 (finding that a licensee’s “frank” response to a letter of inquiry did not warrant a downward adjustment as “complete candor” is required).

<sup>47</sup> See, e.g., *Sutro Broad. Corp.*, Memorandum Opinion and Order, 19 FCC Rcd 15274, 15277, para. 10 (2004) (“In forfeiture proceedings, [the Commission] ha[s] generally provided reductions based on the good faith corrective efforts of a violator when those corrective efforts were taken prior to Commission notification of the violation.”); *Emery Telephone*, 13 FCC Rcd at 23856, 23858, paras. 5, 10 (affirming the bureau’s decision to reduce an aggregate forfeiture from \$12,000 to \$6,000 for failing to file certain required notifications because the carrier voluntarily disclosed the violations and promptly filed the required forms); *Victoria Cellular Corp.*, Memorandum Opinion and Order, 7 FCC Rcd 7853, 7854, paras. 9-11 (1992) (reducing a proposed forfeiture from \$15,000 to \$6,000 for failing to file certain required notifications because the carrier made a voluntary disclosure); see also 47 C.F.R. § 1.80(b)(6), Note to paragraph (b)(6): Section II. Adjustment Criteria for Section 503 Forfeitures (“The Commission and its staff retain the discretion to issue a higher or lower forfeiture than provided in the guidelines, to issue no forfeiture at all, or to apply alternative or additional sanctions as permitted by the statute.”).

<sup>48</sup> See, e.g., *International Broadcasting Corp.*, Order on Review, 25 FCC Rcd 1538, 1540, para. 5 (2010) (“[T]he forfeiture provisions of section 503 of the Communications Act are intended to encourage broadcast station licensees to take appropriate action to prevent violations. Basing mitigation or cancellation of a forfeiture upon corrective action taken subsequent to the misconduct upon which liability is based would tend to encourage remedial, rather than preventive, action.”) (quoting *International Broadcasting Corp.*, Memorandum Opinion and Order, 19 FCC 2d 793, 793, para. 5 (1969)); *Cumulus Licensing Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 5286, 5290-91, para. 12 (2008) (finding that post-notification remedial efforts do not warrant mitigation of a forfeiture); *CB Radio, Inc.*, Memorandum Opinion and Order, 22 FCC Rcd 8836, 8839-40, para. 9 (2007) (“It is well established that post-investigational efforts to correct a violation do not mitigate the forfeiture or warrant a reduction (continued . . . )

10. ASTCA also challenges our assessment of the egregiousness of its violation, stating that its failure to file its hearing aid compatibility status reports only minimally impacted consumer access to information concerning the hearing aid compatibility of digital wireless handset models because such information was available on hearing aid-compatible digital wireless handset labels.<sup>49</sup> We disagree. While consumers may access information about the hearing aid compatibility of particular digital wireless handsets on the labels required by the Rules,<sup>50</sup> these labels do not provide the comprehensive, consolidated information available in the hearing aid compatibility status reports.<sup>51</sup> Moreover, we note that ASTCA's failure to file its November 19, 2007, report, and the six preceding reports, also interfered with the ability of the Commission to fully monitor the deployment of hearing aid-compatible digital wireless handset models in American Samoa.<sup>52</sup> We are therefore unpersuaded that ASTCA's violations had a minimal impact, and decline to either reduce or cancel the proposed forfeiture on this basis.

11. We also reject ASTCA's contention that its history of compliance warrants reduction or cancellation of the proposed forfeiture amount. ASTCA acknowledges that it failed to file seven different hearing aid compatibility status reports.<sup>53</sup> As stated in the *NAL*, each failure to file constitutes a separate continuing violation.<sup>54</sup> Moreover, the Division admonished ASTCA for violating former Section 20.19(c)(2)(i)(B)(1) of the Rules by failing to offer, by September 16, 2005, at least two handset models for each air interface that met at least a M3-rating for radio frequency interference, and former Section 20.19(d)(2) of the Rules by failing to offer by September 18, 2006, at least two handset models for each air interface that met at least a T3 rating for inductive coupling.<sup>55</sup> Because of these multiple violations of our hearing aid compatibility requirements, ASTCA's past performance does not warrant reduction of the proposed forfeiture amount.<sup>56</sup>

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in the assessed forfeiture amount.”); *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099, 6099, para. 7 (1994) (“[C]orrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations.”).

<sup>49</sup> See *NAL* Response at 2.

<sup>50</sup> See *supra* note 31.

<sup>51</sup> See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16787, para. 91 (stating that hearing aid compatibility status reports “should provide as much specific information as possible concerning the cost of implementing hearing aid compatibility into the remaining digital wireless phones manufactured, as well as a comprehensive list of all such phones offered at that time”); see also *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3444, para. 96 (revised hearing aid compatibility status report filing requirements require each service provider to “include an explanation of its methodology for dividing its hearing aid-compatible phones into different levels of functionality, which will help the Commission as well as the public know the range of compatible handsets that are being made available”); *Hearing Aid Compatibility Reconsideration Order*, 20 FCC Rcd at 11241, para. 43 (identifying the “Commission’s interest in having timely, consolidated information” in the form of hearing aid compatibility status reports).

<sup>52</sup> See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16787, para. 89 (stating that one of the purposes of the hearing aid compatibility status report filing requirements is to allow the Commission to monitor progress in the implementation of the hearing aid compatibility rules).

<sup>53</sup> See *NAL*, 23 FCC Rcd at 16436, para. 6.

<sup>54</sup> See *id.* at 16437.

<sup>55</sup> See *NAL*, 23 FCC Rcd at 16437-38, paras. 12-13.

<sup>56</sup> Section 504(c) of the Act, 47 C.F.R. § 504(c), prohibits the use of a non-final, non-adjudicated forfeiture proceeding in any other proceeding before the Commission. The Commission, however, may consider the underlying facts associated with non-final, non-adjudicated forfeiture proceedings. See *Forfeiture Policy Statement*, 12 FCC Rcd at 17102-03, paras. 32-35. Such facts may be used to demonstrate “a pattern of non-complaint (continued . . . )



12. We also decline to reduce the forfeiture based on ASTCA's unsupported assertion that the cost of the forfeiture will be passed through to its customers, many of whom, ASTCA asserts, are in lower socioeconomic brackets.<sup>57</sup> ASTCA's response fails to take into account, however, the cost to the hearing impaired community of its failure to comply. Moreover, ASTCA does not allege that it is unable to pay the proposed forfeiture. In the absence of such a claim and the requisite supporting evidence,<sup>58</sup> ASTCA has failed to justify a reduction of the forfeiture on this basis.<sup>59</sup>

13. As detailed above, we have examined ASTCA's NAL Response pursuant to the statutory factors prescribed by Section 503(b)(2)(E) of the Act and in conjunction with the *Forfeiture Policy Statement*. We conclude that ASTCA willfully and repeatedly violated the hearing aid compatibility status report filing requirements set forth in the Commission's 2003 *Hearing Aid Compatibility Order* by failing to file seven hearing aid compatibility status reports between May 2004 and November 2007. In this regard, we analyze the failure to file hearing aid compatibility status reports as continuing violations for which the statute of limitations does not begin to run until the requisite reports have been filed, thus curing the violations.<sup>60</sup> As such, we have the authority to impose forfeiture liability for each such continuing violation. Here, we exercised our prosecutorial discretion and declined to pursue forfeitures for six of those violations, and we find no basis for further limiting ASTCA's liability through reduction of the forfeiture amount proposed in the *NAL*. Accordingly, we hold ASTCA liable for a total forfeiture in the amount of six thousand dollars (\$6,000).

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behavior against a licensee in a subsequent renewal, forfeiture, transfer, or other proceeding." *Id.* at 17103, para. 34; see also *Paulino Bernal Evangelism*, Memorandum Opinion and Order, 21 FCC Rcd 9532, 9535, para. 11 (Enf. Bur. 2006) (in considering whether a history of compliance exists, the Commission may consider violations occurring in cases where there has been no final determination), *modified on other grounds*, Order on Review, 23 FCC Rcd 15959 (Enf. Bur. 2006).

<sup>57</sup> See NAL Response at 2.

<sup>58</sup> As stated in the *NAL*, the Commission requires federal tax returns for the most recent three-year period, financial statements prepared according to generally accepted accounting practices (GAAP), or some other reliable and objective documentation that accurately reflects the petitioner's current financial status. See *NAL*, 23 FCC Rcd at 16439, para. 19. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. See, e.g., *Discussion Radio*, 19 FCC Rcd at 7441, para. 28.

<sup>59</sup> See, e.g., *Mt. Rushmore Broadcasting, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 12845, 12847, para. 6 (Enf. Bur. 2011) (finding that, in the absence of adequate supporting documentation, the bureau will not consider a request for downward adjustment of a forfeiture based on an inability to pay); *Casey Network LLC*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 14800, 14800, para. 3 (Enf. Bur. 2004) (finding that, in the absence of adequate supporting documentation, the licensee is not entitled to a downward adjustment for an inability to pay based on service to "a shrinking Alabama town whose only industry has mostly shifted to Mexico," and claims of "severe economic depression"); *Forrester et al.*, Forfeiture Order, 19 FCC Rcd 11030, 11031-32, para. 8 (Enf. Bur. 2004) (finding that, in the absence of supporting documentation, the licensee is not entitled to a downward adjustment for an inability to pay based on service to "a very small and economically depressed area" and claims of "serious financial difficulties").

<sup>60</sup> See, e.g., *Compass Global, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 6125, 6138, para. 29 (2008) (finding that failures to file are continuing violations that toll the statute of limitations for forfeiture until the violations are cured); *Telrite*, 23 FCC Rcd at 7244, para. 30 (same); *VCI Co.*, Notice of Apparent Liability for Forfeiture and Order, 22 FCC Rcd 15933, 15940, para. 20 (2007) (same).

#### IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended,<sup>61</sup> and Sections 0.111, 0.311, and 1.80(f)(4) of the Commission's rules,<sup>62</sup> American Samoa Telecommunications Authority **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of six thousand dollars (\$6,000) for willfully and repeatedly violating the hearing aid compatibility status report filing requirements set forth in the Commission's 2003 *Hearing Aid Compatibility Order* by failing to file the hearing aid compatibility status report due November 19, 2007.

15. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's rules within fifteen (15) calendar days after the release date of this Forfeiture Order.<sup>63</sup> If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Communications Act of 1934, as amended.<sup>64</sup> American Samoa Telecommunications Authority shall send electronic notification of payment to Nissa Laughner at Nissa.Laughner@fcc.gov, Pamela Hairston at Pamela.Hairston@fcc.gov, and to Samantha Peoples at Sam.Peoples@fcc.gov on the date said payment is made.

16. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>65</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

17. Any request for full payment under an installment plan should be sent to: Chief Financial Officer – Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-

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<sup>61</sup> 47 U.S.C. § 503(b).

<sup>62</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>63</sup> *Id.* § 1.80.

<sup>64</sup> 47 U.S.C. § 504(a).

<sup>65</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

A625, Washington, D.C. 20554.<sup>66</sup> If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

18. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by First Class and Certified Mail Return Receipt Requested to Alik Sene, Executive Director, American Samoa Telecommunications Authority, P.O. Box M, Pago Pago, American Samoa 96788, and to Gwen Tauiiili-Langkilde, Esq., counsel for American Samoa Telecommunications Authority, American Samoa Telecommunications Authority, P.O. Box M, Pago Pago, American Samoa 96799.

FEDERAL COMMUNICATIONS COMMISSION

John D. Poutasse  
Chief, Spectrum Enforcement Division  
Enforcement Bureau

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<sup>66</sup> See 47 C.F.R. § 1.1914.